retail systems or compete for agent patronage with alleged excess profits from their wholesale operations.

On the other side, CRA argues that the facilities-based carriers' commission rates are high and that such rates are contrary to the viable resale program mandated by the Commission. Absent commission rates of $50 or less, CRA asserts that a stand alone reseller cannot compete in the resale market profitably.

D.84-04-014, which established the Los Angeles market wholesale and retail rates, defines a viable resale program to be a program which provides a potential nonwireline reseller an opportunity to enter the cellular marketplace as a bona fide competitor. It also explained that a viable resale plan is needed to foster competition and is needed to mitigate any adverse effects of the wireline carrier's entry into the cellular marketplace in advance of a nonwireline carrier.

Based on a "hypothetical reseller with 60 percent of the market," a resale rate with an 8 percent profit margin was established to provide a viable business opportunity for two nonwireline entities competing for FCC authority to provide cellular service within the Los Angeles market. One of the hypothetical reseller's cost components used to determine the profit margin was a $50 commission rate per cellular telephone number activation.

Although CRA relies on D.84-04-014 for its reason to restrict commission rates to $50, the opinion does not address the viability of resellers other than future facilities-based carriers or the viability of such carriers during the "head start" period.

CRA argues that if commission rates are higher than $50 per activation, resellers cannot compete at a profit. Its brief filed in C.86-12-02 demonstrates that a reseller paying a $300 commission rate with a 33 percent customer churn rate will operate at a loss in its first year of operation, will not break-even until its third year of operation, and will not earn a 12 percent

cumulative profit until its ninth year of operation. The 33 percent churn rate means that each customer obtained via the commission practice will remain on a reseller's system for 3 years.

CRA represents that a 50 percent churn rate is a more realistic rate. Given a 50 percent churn rate a reseller will not only not break-even but will lose money.

However, resellers response to a DRA inquiry shows that the resellers churn rate ranges from a low of 2 percent to a high of 35 percent, an average of 19 percent. If this simple average is applied to CRA's analysis discussed above, a reseller should break-even in its second year of operation, even with $300 commission payments.

Although a reseller may not turn a profit in the first year of operation, it has easy entry into the market and has an opportunity, not a guarantee, to earn a profit. Not even is a monopoly entity expected to earn a profit in its first year of operation. The realization of a profit should not be dependent on the level of agents' commission payments. Rather, profitability should be based on an individual resellers' ability to manage its business in a competitive environment.

Comments do not demonstrate that commission payments preclude resellers an opportunity to enter the market or to earn a profit. Rather, comments show that there is sufficient incentive for resellers to enter the market and to operate a viable business. By this opinion regulatory changes are being made to further enhance the resellers' viability. Two examples are the nondominant telecommunications carrier status for resellers and the implementation of agent guidelines. Therefore, commission payments to agents should not be restricted.

Consistent with our prior discussion regarding the monitoring of carriers' retail profitability, including commissions as a retail expense will further protect resellers; carriers will report losses if commission payments exceed the contribution that

customers supply. In other words, commissions will appear as an expense against carriers' retail operations. If the customers that carriers obtain by paying commissions do not produce enough contribution to offset the commission payments, then the retail carrier operations will show losses and be subject to corrective action by the Commission. This protects resellers by assuring that carriers pay commissions only to the extent that is justified by rational business decisions. To maintain the rational business perspective, the USOA for carrier retail expenses should permit commissions to be amortized over the expected life of a customer. Otherwise, the reported ratio of revenues to expenses would not necessarily indicate whether carriers were making rational business decisions in determining the level of commissions paid.

Aside from the competitive issue between resellers and wholesale carriers, we are concerned that commissions not become a de facto method of practicing price discrimination in favor of new customers. While bundling of cellular equipment with regulated service is illegal, agents can still be expected to discount equipment substantially in the expectation that most customers will sign up for service. While this is a benefit to the consumer, we would also like to see discounts more generally available, and we will monitor the results of this decision to determine whether we are satisfied with the progress towards lower rates.

The wholesale carriers have argued that commissions are a necessary marketing expense needed to counteract the loss of customers through churn. This is consistent with the nontariffed long-term service agreements that we also have found to be illegal. However, tariffed discounts for long-term service arrangements or high volumes of usage would be acceptable, and we will encourage carriers and resellers to offer them. Such tariffs should be available on a nondiscriminatory basis to any customer willing to fulfill their terms. For tariffs that impose an affirmative obligation on the customer (minimum volumes or length of service),

carriers should provide a written disclosure of the tariff's terms in plain language for each prospective customer, and retain a signed copy of the terms by which the customer affirms an understanding of them and a willingness to comply in exchange for the discount.

Any carrier offering these discounts must also offer a "plain" tariff that does not impose special length of service or volume requirements on the customer.

A second aspect of the subsidization issue which parties were requested to comment on is whether or not a facilities-based carrier's affiliate should be prohibited from reselling in markets where the facilities-based carrier provides retail services. PacTel's A.87-02-017 was consolidated with this investigation because of just such an issue.

By D.85-04-014 (Bay Area Cellular Telephone Company's (BACTC) A.85-02-034), the Commission established a policy under which nonwireline facilities-based carriers may resell cellular services off the wireline carrier's system until such time as the nonwireline carrier's facilities are constructed and made operational. The opinion specifically stated that when the facilities became operational and the carrier began wholesale services, the carrier would not be allowed to compete with itself in the same market area. This policy has remained in effect since D.85-04-014 to discourage anticompetitive and cross-subsidization practices.

LA Cellular does not oppose affiliated competition as long as the end users are not misled as to the ultimate source of service. LA Cellular also believes that the imposition of any such restriction violates the FCC's cellular resale policy.

DRA's Phase I comments corroborate LA Cellular's interpretation of the FCC resale policy. DRA informs us that the FCC currently prohibits any resale restrictions pending the results of a rulemaking proceeding opened to determine whether its

prohibition of all resale restrictions should continue under all circumstances.[13]

McCaw concurs with LA Cellular providing the affiliate subscribes to the cellular services of both facilities-based carriers within the market area. However, McCaw acknowledges that granting such authority will reduce the facilities-based carriers' incentive to expand and to improve its system.

PacTel believes that a facilities-based carrier's affiliate should not be prohibited from reselling in markets where it provides retail services so long as the affiliate does not resell the facilities-based carrier's competitor's service. PacTel asserts that if the affiliate can place a large customer base on the other carrier's system, the affiliate has the ability to injure the other carrier with the threat of withdrawing its resale customers.

There is no concurring position on this issue. Although McCaw's and PacTel's comments substantiate the underlying reason we implemented the restrictive retail policy; i.e., to discourage anticompetitive and cross subsidy practices, there is nothing in the record for us to consider whether the FCC has preempted us in this matter. Absent such a record, we cannot resolve this issue or the disputed application of this issue in A.87-02-017. Parties should address the issue of FCC preemption in the next phase of this investigation.

Wholesale Rates for Large Organizations

Duopoly carriers tariffs for wholesale service, as currently authorized, enable large organizations who purchase cellular services for their own use to benefit from economies of

---

13 Memorandum Opinion and Order, FCC 88-308 (released October 7, 1988).

scale via reduced rates. Such reduced rates have been afforded to large organizations since 1984 by D.84-04-014.

The definition of a large organization has not been an issue until several resellers filed a complaint (C.89-03-016) against BACTC in March 1989. The complaint pertained to a large organization, SJREB, obtaining wholesale rates from BACTC. SJREB, a professional real estate organization consisting of approximately 6,930 realtor members, acquired cellular services at a wholesale rate to pass through to its members and to be used for each member's individual use without seeking a reseller CPCN. BACTC's wholesale rates were available to SJREB if it satisfied conditions specified in BACTC's wholesale tariff.

D.89-05-024 concluded that BACTC should be precluded from expanding its wholesale cellular services to the unserved members of SJREB pending a determination of large organizations as applied to wholesale rates. SJREB members who received wholesale services from BACTC prior to the issuance of the decision were provided "grandfather" wholesale status.

All parties involved in the BACTC complaint were invited to present proposals to resolve the issue of which large organizations should be eligible for wholesale cellular services. SJREB, DRA, and CRA filed comments on the large organization issue.

SJREB believes that price competition can be enhanced if large "bona fide" professional trade organizations such as SJREB are recognized and made eligible for wholesale service where certain conditions exist. Specifically, it recommends that eligibility be based on the following conditions:

a. The organization must be a professional organization with a recognized professional, trade, or commercial purpose with at least 500 members. The organization must have a minimum of 200 customers sign up for service.

b. Members of the organization must be engaged in for-profit activity directly germane to

the professional purpose of the organization.

c. The organization must serve as the master customer and guarantee payment for all usage by its members.

d. The organization must perform marketing activities for the wholesale service provider.

DRA believes that the definition of a large organization is irrelevant in determining whether organizations like SJREB are eligible for wholesale rates. It believes that the proper focus is on the purchase of cellular services in the quantities prescribed in the applicable tariffs, whether by an individual or an organization, and on the purchaser's intended use of the services.

Since SJREB purchases wholesale service for its members' own use, and not the organization's use, DRA does not believe that SJREB can obtain wholesale service without becoming a certificated reseller under current tariff provisions.

DRA concurs with SJREB that price competition can be enhanced by providing a form of wholesale rates to large users of cellular service. However, it does not believe that SJREB's proposal should be adopted. Rather, it recommends that individual facilities-based carriers adopt alternative pricing plans to satisfy their customers needs, such as SJREB, and that such proposals be reviewed on a case-by-case basis.

CRA also opposes SJREB's proposal. It objects because the proposal is anticompetitive on the retail level, invites carrier abuse on both the wholesale and retail level, and is unfair to members of the general public who also desire lower retail cellular rates. CRA argues that SJREB's proposal, if approved, will enable large organizations such as the Chamber of Commerce, medical associations, and bar associations to receive preferential cellular rates.

CRA believes that the proper solution to the large organization issue is to let carriers offer large organizations discounts that are below the carriers retail ceiling but above their wholesale compensatory level. This recommendation stems from CRA's recommended cost-based regulation of the duopoly carriers. CRA asserts that its proposal will give resellers access to the large-user accounts and will result in discounts for volume users.

SJREB points out that the impact of wholesale usage on resellers has been addressed in Resolution T-13052, regarding U S West's "multiple phone" tariff. By that resolution, U S West was authorized to provide tariff rates above its wholesale rates, but below its retail rates, to organizations similar to SJREB. Specifically, the multiple phone rates are available to any individual or entity that guarantees the payment of underlying individual bills sent to employees, officers or members, or to a entity which fulfilled various requirements relating to promoting U S West's service.

U S West's proposed tariff was approved because U S West substantiated that its cost of serving an identified group of users is less than its cost of serving other customers thereby justifying its passing through cost savings to the identified group of customers.

There is no dispute that facilities-based carriers enjoy economies of scale from large users and that such economies of scale should be passed through to the customers. However, if SJREB's wholesale proposal is adopted, organizations which are not-for-profit and/or nonprofessional organizations will be excluded.

Even if such organizations were included, the proposal may be construed as anticompetitive to the resellers because such organizations would be entitled to the same rates as the resellers but not be required to be a certificated or be required to provide nondiscriminatory services which is required of a reseller. Such a

proposal may encourage discriminatory cellular services and stifle competition.

On the other side, DRA's and CRA's proposal merits serious consideration. Economies of scale are recognized through volume usage and as such, a form of wholesale rates should be afforded to those individuals or entities, irrespective of professional affiliation, who contribute to volume usage and intend to offer cellular services to a restricted group of end users.

Because rates are based on the market, it is difficult for carriers to determine the economies of scale they expect to receive from large-volume users. Therefore, absent any definite price support, carriers should implement a large-user tariff if there is a demand for such service within their statistical metropolitan service areas (SMSAs). To qualify for this large-user tariff the organization or entity must serve as the master customer, guarantee payment for all usage by its members, and not apply any additional charges to its members for such service. In particular, carriers should not bill and collect from individual customers of the bulk-user group or organization.

For purposes of monitoring carrier retail expenses and revenues under the revised USOA, bulk-user service will be considered retail.

As previously discussed, a large user is not public utility and is not accountable to us for consumer safeguards like a reseller is. A reseller, as a public utility, incurs certain regulatory costs not applicable to large users. Some of these costs associated with regulation are financial reporting requirements, tariff filings, rate and complaint proceedings, consumer safeguard procedures, and user fees. To grant a duopoly carrier authority to charge a large user the same rate that it charges a reseller may be anticompetitive for the reasons discussed above and should not be granted unless the resale market is deregulated. Since we are not prepared to deregulate the resale

market at this time the duopoly carriers should set their large user rates at least five percent above the rates they charge resellers. The percentage difference is necessary to enhance cellular competition by providing resellers an opportunity to compete for large user business. The five percent margin should not, however, affect any rate offered by a carrier to a government agency. The consumer protection disclosure provisions described in the Phase I discussion should also apply to large-users and be incorporated into the corresponding utility tariffs.

D.89-05-024's grandfather clause provides for those SJREB members receiving cellular services from BACTC at wholesale rates to continue to receive such rates until the individual members choose to terminate or leave the BACTC system. However, such grandfather provision can only be contingent upon SJREB meeting the specific BACTC's tariff provisions for wholesale service. BACTC should not be allowed to provide service at the same wholesale rates to SJREB for the use of SJREB members who were not grandfathered by D.89-05-024.

Section 311 Comments

The Administrative Law Judge's (ALJ) proposed decision on this matter was filed with the Docket Office and mailed to all parties of record on March 12, 1990, pursuant to Rule 77 of the Commission's Rules of Practice and Procedure.

Pursuant to Rule 77, comments were due on April 2, 1990. However, CRA requested that the comment period be extended four days to April 6, 1990 and that reply comments be due seven days later on April 13, 1990. The ALJ granted CRA's request because CRA's requested extension had no impact on the date that a final decision on this matter would be considered by the Commission. The extension was granted on condition that CRA notify all active parties to this matter, that no active party objected to the extension, and on condition that parties filing comments and/or

reply comments serve a copy of their comments to the ALJ on the above-mentioned filing dates.

Comments from BACTC, Cellular Services Inc., CP National, CRA, DRA, GTE, LA Cellular, McCaw, Mission Bell Telecommunications Corporation (Mission Bell), PacBell, and PacTel were timely filed with the Docket Office and timely served on the ALJ. Although comments were timely filed with the Docket Office from Advantage Group, Cellular Dynamics, County of Los Angeles, Fresno, GTEM, SJREB, and U S West they were not timely served on the ALJ.

Reply comments from BACTC, Cellular Services, Inc., CRA, CP National, DRA, McCaw, Mission Bell, and Twentieth Century Cellular were timely filed with the Docket Office and timely served on the ALJ. Although reply comments were timely filed with the Docket Office from Advantage Group, Cellular Dynamics, LACTC, PacBell, PacTel, and SJREB they were not timely served on the ALJ.

Comments and reply comments identified above as not timely served on the ALJ should not be considered. However, for this proceeding only, we will consider the above-tardy served comments.

CRA filed a motion to strike LACTC's comments because the appendices attached to LACTC's comments included additional discussions regarding LACTC's proposed findings of fact and conclusions of law, contrary to Rule 77. CRA's motion also requests that LACTC's reply comments be rejected because LACTC's 19-page reply comment exceed the 5 page limit allowed under Rule 77.5. PacBell also filed a motion to reject LACTC's reply comments for the reason cited by CRA.

LACTC disputes CRA's assertion that appendices attached to comments should be restricted to only findings of fact and conclusions of law. LACTC believes that a "more generous 25-page restriction of Rule 77.3" applies. As to its reply comments, LACTC acknowledges that its reply comments exceed the five-page limit and requests that its reply comments be deemed withdrawn, and that we

accept in lieu a five-page summary document attached to its response to CRA's and PacBell's motions. LACTC represents that acceptance of the five-page summary, which adds no arguments or citations to those set forth in the reply comments timely served on all parties, will not prejudice any party.

Contrary to LACTC's Rule 77.3, interpretation of a generous 25-page comment restriction, the rule specifically provides for a maximum of 25 pages of comments in major proceedings. We interpret 25 pages to be just that, 25 pages.

Although there are no page limits on appendices, Rule 77.3 does not provide for additional comments to be incorporated into appendices. To do so would negate the intent of restricting comments. Appendices are restricted for findings of fact and conclusions of law. Therefore, we reject LACTC's proposal to accept a generous 25 pages of comments and will not consider LACTC's comments included in its appendices. LACTC's comments which precede its appendices are valid and are considered.

No party has objected to LACTC's five-page summary which replaced its reply comments. Therefore, we have considered LACTC's five-page summary comments. In accepting the summary comments we note that LACTC has successfully submitted a generous five pages of reply comments by reducing the print size and almost doubling the number of lines per page. Any continuance of this procedure may result in rejection of comments.

Personal Cellular Services, Inc. (PCS), certificated as a cellular reseller 16 days after the proposed decision was mailed, filed comments on the proposed decision. Rule 77.2 provides parties to a proceeding an opportunity to file comments on the proposed decision. However, PCS was not a party to this proceeding. Therefore, PCS's comments will not be considered in this proceeding.

In summary, we have carefully reviewed the comments, but have not summarized them in this order. To the extent that they

required discussion, or changes to the proposed decision, the discussion and changes have been incorporated into the body of this order.

Findings of Fact

1. Cellular telecommunications systems have the capability to offer "toll free" calling over large geographic regions of the state through tandem interconnections with IECs. Toll charges for mobile-originated calls terminated outside a specific geographical region are passed through to the customer.

2. Cellular service is a discretionary service complementing conventional wireline service.

3. A decline in the cost of cellular service to approximately that of conventional wireline service will be an important factor in the transformation of cellular service as a direct competitor to conventional wireline service.

4. The decline in the price of mobile telephones from an average of $2,500 in 1984 to an average of about $500 in 1989 enhanced cellular market penetration.

5. With the availability of low-cost phones, the primary avenue for enhanced market penetration will be in reduced access and network usage costs.

6. Customer penetration into the cellular market will have no significant impact from regulatory policy changes which may encourage lower landline toll rates or which encourage an increase in the growth of the intraLATA toll market.

7. The CGSAs approved by the FCC and this Commission were never intended to conform to or coincide with existing landline boundaries.

8. Enhanced services, such as voice mail, will expand the role of cellular phones with efficient 24-hour communication capabilities.

9. Universal service, or the availability of basic telephone service at affordable prices to all Californians, is a basic goal

imposed on the LECs. Cellular service is not a component of universal service at this time.

10. Cellular is a high-cost developing industry undergoing rapid technological changes. It is expected to serve only about five percent of the population in the next five years.

11. Effective competition will promote economic efficiency in the production and pricing of cellular service.

12. Parties agree that cellular prices would tend towards the marginal cost of service in an unrestricted, fully competitive cellular market and that such a result would be economically efficient and fair.

13. The FCC licenses held by wholesale carriers authorize the use of a limited amount of radio spectrum that can become a constraining factor in the amount of service that can be provided .

14. In the case where the available radio spectrum is a constraining factor in the amount of service provided, economic efficiency considerations argue for permitting wholesale carriers to retain profits due solely to this scarcity. These profits serve as an incentive to expand the capacity of the system as rapidly and efficiently as possible.

15. It is unreasonable for wholesale carriers to price in a noncompetitive or collusive manner or to retain any profits so earned.

16. Accounting rates of return for wholesale carriers do not in themselves reveal whether profits are due to a scarcity of available radio spectrum, uncompetitive pricing, or the ordinary returns on investment that may be earned due to the riskiness of the cellular industry.

17. The duopoly wholesale carriers in a given market have different system configurations and therefore different cost structures. Any regulatory approach to setting wholesale rates through cost of service calculations will necessarily produce

different prices for the two systems if the allowed rates of return are the same for each.

18. A regulatory requirement that competing carriers charge different prices would cause the higher-priced carrier to lose customers and deprive that carrier of a reasonable opportunity to earn the rate of return based on which its price was set.

19. The encouragement of technological advancement is an important goal.

20. Technological advancement can best be encouraged by providing cellular carriers the means to attract capital necessary to make investments in research, development, and commercialization of innovative technology.

21. Cellular carriers increase the utilization of LEC networks and provide revenue to LECs in the form of interconnection charges paid by cellular carriers and call-origination charges paid by LEC customers who call cellular service subscribers.

22. The Cellular USOA plays an active role in discouraging anticompetitive behavior.

23. D.84-04-014 set a regulatory policy that facilities-based carriers wholesale operations should not subsidize their retail operations.

24. There is no USOA for resellers.

25. The USOA for cellular carriers does not contain provisions for distinguishing wholesale and retail costs.

26. A regulatory requirement that the retail operation of cellular carriers at least break-even on a rational business basis would assure that carriers are not cross-subsidizing retail operation with wholesale revenues or profits. To enforce such a requirement will require that the cellular USOA be modified to distinguish between wholesale and retail costs.

27. Experience has shown that cellular providers are willing to provide high-quality performance.

28. Service quality measurements are service consistency, high-quality voice transmission, ease of placing and receiving calls from one location to another, customer complaints, and billing service.

29. Subscription fraud and roamer fraud exist in the cellular industry.

30. Subscription fraud occurs via a customer providing incorrect billing information.

31. Roamer fraud exists when end users utilize an unauthorized subscriber telephone number or alter the ESN on their cellular terminal while roaming in remote areas.

32. Approximately 10 percent to 15 percent of Santa Barbara's roamer traffic is fraudulent.

33. Facilities-based carriers have expended a considerable amount of time and effort to implement PRVs to reduce roamer fraud.

34. The ability for a cellular utility to request that the ESN for a customer's cellular telephone be blocked on a routine basis when the customer discontinues service can be used anticompetitively to restrict appropriate customer choice among service providers.

35. As described in the discussion section of this decision, more clearly-defined tariff provisions regarding ESN blocking and the disclosure of terms regarding customer deposits will promote greater competitiveness in the retail market and improved consumer protection while maintaining reasonable means for utilities to protect against fraud.

36. Cellular customers are charged for all cellular calls, whether they are on the originating or terminating end of the call.

37. PacBell is exploring the feasibility, from the standpoint of the LECs, of billing the landline customer who calls a cellular number, referred to as "calling party pays."

38. Local telephone company subscribers have no way of verifying whether a given telephone number is for a cellular phone,

and they have no expectation of paying cellular airtime charges for calling a cellular phone. Therefore, "calling party pays" billing plans are unreasonable at this time.

39. Cellular calls can be monitored by a third party without the other party's knowledge.

40. Cellular customers' privacy-of-calls is not seriously compromised because of Commission action in D.87-06-029.

41. Those customers who need strict privacy can purchase encryption devices to scramble cellular signals at a reasonable price.

42. The improved privacy that digital cellular technology will afford to customers is a reason for promoting the use of digital cellular technology.

43. Commissions paid to agents of cellular carriers have been a major issue in resale complaint proceedings before us.

44. Cellular rates will increase if agents are required to publish the commissions they receive from wholesalers and resellers.

45. The payment of commissions to agents by carriers and resellers is a legitimate business practice that substitutes for the expense that would otherwise be required to market service to customers directly.

46. Facilities-based carriers' bulk rate are set at the same rate or at a slightly higher rate than their wholesale rates.

47. It costs more to provide service to individual small users than to bulk users.

48. Economies of scale are gained from large users.

49. Large users that do not add any markup or additional charge to service they supply to members or individual subscribers are not public utilities.

50. Customers who purchase cellular service from large users that are not public utilities may be unaware that certain of the Commission's consumer protection procedures are unavailable to them

for resolving disputes between an individual customer and the large user.

51. Resellers incur regulatory costs that uncertificated bulk users do not, and provide corresponding Commission-overseen consumer protections.

52. A margin of at least five percent between the wholsale tariff price to resellers and the lowest available bulk-user discount offered by carriers would compensate approximately for the regulatory costs that resellers incur and bulk-user organizations do not.

53. There are substantial fixed costs associated with the provision of cellular service.

54. Facilities-based carriers enjoy economies of scale at the wholesale level through volume usage and lower bad debt losses, marketing and billing costs, and a lower churn rate.

55. The FCC established 12 RSAs in California and 18 MSAs.

56. The FCC permits a duopoly structure in each RSA comprised of one nonwireline (Block A) operator and one wireline (Block B) carrier.

57. The first RSA became operational in February 1990.

58. The RSAs are located in remote areas with sparse populations.

59. Some facilities-based carriers restrict roaming arrangements to one particular carrier.

60. The refusal by a facilities-based carrier to enter into roaming agreements with unaffiliated carriers in other markets is discriminatory.

61. Wireline cellular carriers enjoyed a head start to operate because of the FCC licensing procedure.

62. The nonwireline carriers had the opportunity to operate as a reseller pending the construction of their respective system.

63. The FCC required the wireline carriers to accommodate the use of the nonwireline carriers' discrete NXX Code so that

nonwireline carrier customers would not have to change their telephone number when the nonwireline carrier became operational as a facilities-based carrier.

64. The wireline carrier, or first carrier, must rely entirely on market projections of a new industry based on demographic analyses which may leave the first carrier with significant excess capacity for a period of time, and must build a system to accommodate the resale customer base of the nonwireline carrier during the head start period.

65. At this time there are no outstanding issues regarding the wireline head start that require Commission action.

66. Roamer service is a service whereby a cellular customer of a carrier in a CGSA travels to another CGSA in which another cellular carrier offers service and the latter cellular carrier provides cellular service to the visiting cellular customer.

67. Facilities-based carriers negotiate roamer arrangements with other cellular carriers. They also negotiate interconnection arrangements with wireline LECs and IECs.

68. Facilities-based carriers are responsible for payment of roaming and toll-interconnection services rendered to their retail subscriber as well as a reseller's retail subscriber.

69. Resellers do not perform any of the special billing functions with respect to roamer traffic and do not participate in the cost of verification of roamer traffic.

70. Reseller costs associated with roamer services are incremental, as compared to the facilities-based carriers' roamer costs.

71. LEC enhanced services are not required to be tariffed.

72. Advantage Group's Phase II comments were tardy because it was not aware of the September 1, 1989 deadline until after it received copies of other parties' comments in the mail.

73. Consumer protection would be advanced by applying the same billing safeguards to cellular enhanced services that have been applied to LEC enhanced services.

74. SJREB opposes Advantage Group's motion to accept late-filed comments.

75. The agent's perspective in this investigation is important.

76. Cellular Dynamics promotes the need for additional regulatory oversight of the duopoly carriers.

77. DRA believes that the duopoly structure impedes competition because each competitor recognizes that any price reduction will be either matched or undercut by the other carrier resulting in a neutral dependence on each other.

78. Carriers face competition not only from direct rivals but from providers of alternative telecommunications services.

79. Any collusion to suppress competition is a violation of antitrust laws.

80. DRA and CRA assert that high return on net cellular plant substantiates that rates are excessive.

81. LACTC represents that the Los Angeles market has steadily increased since March 1987 to the point where nearly 50 percent of all system activation originates with resellers.

82. Cellular risk is substantially different from the monopoly telecommunications market.

83. The cellular industry is in a start-up mode requiring substantial amounts of money to invest in facilities. The upcoming need to install of enhanced digital technology is facing the entire cellular industry.

84. All facilities-based cellular carriers in California lost money during their initial years of operation.

85. The profitability of facilities-based cellular carriers in California varies widely between markets and between carriers in given markets.

86. Some forms of regulatory oversight have encouraged competition.

87. Unlike monopoly local exchange telephone companies, cellular carriers have no captive market of monopoly ratepayers.

88. Allowing cellular carriers to retain all returns on investment earned through the competitive provision of service encourages technological advancement, the expansion of service to new customers, and reductions in unit costs.

89. If a cellular system is operating at or near the limits of its capacity, then a price reduction could increase customer demand and cause a degradation in service quality or the need to ration the availability of service to new customers.

90. The direct control of cellular prices through cost of service or rate of return regulation is inconsistent with the most important regulatory goals of promoting technological advancement, the expansion of service, and economic efficiency.

91. The most important goals for the cellular industry would be best sought through the indirect control of prices through regulatory requirements to expand cellular systems as rapidly as possible and to price so as to fill available capacity with customers.

92. Competition can be enhanced with the undertaking of additional regulatory policies.

93. D.88-05-067 amended GO 96-A to require a 40-day notice for wholesale carriers and 30-day notice for retail carriers.

94. D.88-05-067 recognised that further tariff changes in the context of a broader review of the cellular industry may be warranted.

95. The two-tier tariff notice period does not enhance the competition between carriers.

96. The current tariff provisions require carriers to provide competitors advance notice of marketing strategy.

97. Carriers oppose any simplified index rate mechanism.

98. Rate-indexing proposals are problematic because they determine price changes without reference to market conditions or technological changes occurring at a rapid and uncertain rate.

99. Both DRA's and CRA's alternative rate methods are based on a form of cost-based monopoly regulation.

100. The carrier return on equity has been an ancillary factor in setting market rates.

101. Carrier returns on equity have not been a primary factor in determing market rates for cellular service.

102. The combination of increased pricing flexibility for carriers and Commission oversight of cellular system expansion and utilization will produce just and reasonable wholesale rates through the competitive process.

103. Given the fully competitive nature of the retail cellular industry and the regulatory protections contained in this decision, the competitive process will produce just and reasonable retail rates.

104. Specific interconnection costs and services vary for each cellular carrier because of the unique network characteristics of each cellular carriers system and because of competitive strategy.

105. PacBell and GTE charge cellular carriers and IECs for access services.

106. Cellular carriers provide discretionary cellular radio service in geographical areas which overlap the exchange areas in which the LECs provide service.

107. Unlike IECs, cellular carriers provide a complete substitute for local exchange networks for originating and completing calls to end users. Unlike LECs, most cellular calls originate on the cellular network and terminate on the local exchange network. These facts argue for access arrangements for cellular carriers that are in between those provided by LECs to IECs and to other LECs.

108. Cellular carriers access and benefit from the LECs' local loop.

109. Tariffs for wholesale service enable large organizations who purchase cellular services for their own use to benefit from economies of scale.

110. SJREB, a professional real estate organization, acquired cellular services at a wholesale rate to pass through to its members and to be used for each member's individual use.

111. BACTC's wholesale rates were identical to its large user rates.

112. Price competition can be enhanced by providing wholesale rates to large users of cellular service.

113. CRA argues that SJREB's proposal will enable large organization such as the Chamber of Commerce, medical associations, and bar associations to receive preferential cellular service.

114. U S West's proposed tariff was approved because U S West substantiated that its cost of serving an identified group of users is less than its costs of serving other customers.

115. SJREB's wholesale proposal excluded organizations which are for-profit and nonprofessional organizations.

116. The resellers market is comprised of duopoly carriers, affiliates of duopoly carriers, and independent resellers.

117. The retail market is functioning well.

118. Rapid entry into the resellers market exists because of relatively low regulatory barriers needed for entry and minimal capital requirements.

119. Resellers function adequately during their initial start-up period as well as during subsequent periods of time.

120. Resellers have, on a case-by-case basis, been determined to be a nondominant telecommunications carrier.

121. Comments filed in this investigation confirm that the reseller market is a competitive service.

122. Resellers have filed numerous complaints against carriers subsidizing their operations with commission schemes.

123. Absent an approved tariff filing, cellular equipment discounts, contingent upon the purchase of tariffed cellular services, violate PU Code §§ 532 and 702 if those discounts are offered by utilities or their agents.

124. Conditions on cellular services that differ from those in effective tariffs are unlawful if they are imposed by carriers on their agents.

125. A facilities-based carriers's affiliate is prohibited from reselling in markets where the facilities-based carrier provides retail services.

126. The FCC currently prohibits any resale restrictions pending the results of its rulemaking proceeding.

127. Commission payments of up to $350 per activation are made to agents.

128. D.84-04-014 defines a viable resale program to be a program which provides a potential nonwireline reseller an opportunity to enter the cellular marketplace as a bona fide competitor.

129. CRA relies on D.84-04-014 for its reason to restrict commission rates to $50.

130. Resellers churn rates range from a low of 2 percent to a high of 35 percent.

131. Resellers are not precluded an opportunity to enter the market or to earn a profit.

132. Currently, wholesale carriers are required to provide a 40-day notice prior to any tariff change as compared to resellers' 30-day notice requirement.

Conclusions of Law

1. A "basic service" goal for the cellular industry should not be set at this time.

2. Universal service should not be a goal for the cellular industry at this time.

3. A regulatory monitoring program to assure that cellular carriers are not cross-subsidizing their retail operation should be established to deter possible anticompetitive behavior.

4. Although the quality of cellular service in California is not an issue at this time, continued regulatory oversight of service quality should be maintained.

5. Cellular carriers should perform subscription information verification checks for each new customer prior to service.

6. Regulatory controls to deter fraud should not be set so long as the cellular industry continues taking an active role in reducing consumer fraud.

7. LECs should not be allowed to bill the calling party for cellular service at this time.

8. Cellular privacy oversight controls should not be necessary because there are sufficient safety procedures in place to protect individual subscribers' conversations at this time.

9. Agents should not be required to publish the commission rates they receive from carriers and resellers.

10. Cellular users should not be provided service below the facilities-based carriers' cost to provide service.

11. The cellular industry should be given flexibility to price to attract casual users.

12. The facilities-based carrier should not be precluded from flowing through economies of scale to its bulk-rate users.

13. All facilities-based carriers should be required to provide roaming arrangements to any cellular carrier or reseller desiring to roam.

14. The RSAs cellular carriers should seek flexible and innovative arrangements in their CPC&Ns so that the RSA cellular markets can develop rapidly.